

# SENATE BILL No. 419

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 13-15-4-1; IC 13-18-2-3; IC 13-18-3-2; IC 13-18-3-2.1.

**Synopsis:** Antidegradation of surface waters. Allows the department of environmental management (IDEM) to establish for a surface water the total maximum daily load for a pollutant only if: (1) the department identifies the pollutant at the time of the initial listing of the surface water; and (2) the pollutant is subject to a numeric water quality criterion. Provides that an exceptional use water for which the water pollution control board (WPCB) does not complete rulemaking before 2011 for designation as an outstanding state resource water becomes a high quality water by operation of law on January 1, 2011. With respect to the adoption of a rule to apply antidegradation standards and implementation procedures: (1) prohibits application of the rule to activities authorized and regulated under a NPDES general permit; (2) allows the rule to regulate a pollutant only if the pollutant is subject to a numeric water quality criterion or federally promulgated effluent guidelines; and (3) requires in a determination of social and economical necessity that substantial weight be given to any applicable determinations by governmental entities. Provides that for an NPDES permit application and a concurrent permit application for associated activity under antidegradation standards, the deadline for IDEM action on both applications is the later of the two action deadlines.

**Effective:** Upon passage.

**Gard**

January 12, 2009, read first time and referred to Committee on Energy and Environmental Affairs.



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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## SENATE BILL No. 419

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 13-15-4-1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Except as  
3 provided in sections 2, 3, and 6 of this chapter, the commissioner shall  
4 approve or deny an application filed with the department after July 1,  
5 1995, within the following number of days:

6 (1) Three hundred sixty-five (365) days for an application  
7 concerning the following:

8 (A) A new hazardous waste or solid waste landfill.

9 (B) A new hazardous waste or solid waste incinerator.

10 (C) A major modification of a solid waste landfill.

11 (D) A major modification of a solid waste incinerator.

12 (E) A new hazardous waste treatment or storage facility.

13 (F) A new Part B permit issued under 40 CFR 270 et seq. for  
14 an existing hazardous waste treatment or storage facility.

15 (G) A Class 3 modification under 40 CFR 270.42 to a  
16 hazardous waste landfill.

17 (2) **Except as provided in IC 13-18-3-2.1**, two hundred seventy



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(270) days for an application concerning the following:

(A) A Class 3 modification under 40 CFR 270.42 of a hazardous waste treatment or storage facility.

(B) A major new National Pollutant Discharge Elimination System permit.

(3) **Except as provided in IC 13-18-3-2.1**, one hundred eighty (180) days for an application concerning the following:

(A) A new solid waste processing or recycling facility.

(B) A minor new National Pollutant Discharge Elimination System individual permit.

(C) A permit concerning the land application of wastewater.

(4) **Except as provided in IC 13-18-3-2.1**, one hundred fifty (150) days for an application concerning a minor new National Pollutant Discharge Elimination System general permit.

(5) One hundred twenty (120) days for an application concerning a Class 2 modification under 40 CFR 270.42 to a hazardous waste facility.

(6) Ninety (90) days for an application concerning the following:

(A) A minor modification to a solid waste landfill or incinerator permit.

(B) A wastewater facility or water facility construction permit.

(7) The amount of time provided for in rules adopted by the air pollution control board for an application concerning the following:

(A) An air pollution construction permit that is subject to 326 IAC 2-2 and 326 IAC 2-3.

(B) An air pollution facility construction permit (other than as defined in 326 IAC 2-2).

(C) Registration of an air pollution facility.

(8) Sixty (60) days for an application concerning the following:

(A) A Class 1 modification under 40 CFR 270.42 requiring prior written approval, to a hazardous waste:

(i) landfill;

(ii) incinerator;

(iii) treatment facility; or

(iv) storage facility.

(B) Any other permit not specifically described in this section for which the application fee exceeds forty-nine dollars (\$49) and for which a time frame has not been established under section 3 of this chapter.

(b) When a person holding a valid permit concerning an activity of a continuing nature has made a timely and sufficient application for a

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renewal permit under the rules of one (1) of the boards, the commissioner shall approve or deny the application on or before the expiration date stated in the permit for which renewal is sought.

SECTION 2. IC 13-18-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The department shall prepare a list of impaired waters for the purpose of complying with federal regulations implementing Section 303(d) of the federal Clean Water Act (33 U.S.C. 1313(d)). In determining whether a water body is impaired, the department shall consider all existing and readily available water quality data and related information. The department, before submitting the list to the United States Environmental Protection Agency, shall:

- (1) publish the list in the Indiana Register;
- (2) make the list available for public comment for at least ninety (90) days; and
- (3) present the list to the board.

If the United States Environmental Protection Agency changes the list, the board shall publish the changes in the Indiana Register and conduct a public hearing within ninety (90) days after receipt of the changes.

(b) The board shall adopt by rule the methodology to be used in identifying waters as impaired. The rule must specify the methodology and criteria for including and removing waters from the list of impaired waters.

**(c) The department may establish for a surface water the total maximum daily load for a pollutant under Section 303(d) of the federal Clean Water Act (33 U.S.C. 1313(d)(1)(C)) only if:**

- (1) in identifying the surface water under Section 303(d) of the federal Clean Water Act (33 U.S.C. 1313(d)(1)(A)) the department identifies the pollutant as a pollutant under consideration for the establishment of the total maximum daily load; and**
- (2) the pollutant is subject to a numeric water quality criterion established in a rule or in a statute.**

SECTION 3. IC 13-18-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The board may adopt rules under IC 4-22-2 that are necessary to the implementation of:

- (1) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as in effect January 1, 1988; and
- (2) the federal Safe Drinking Water Act (42 U.S.C. 300f through 300j), as in effect January 1, 1988;

except as provided in IC 14-37.

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(b) "Degradation" has the meaning set forth in IC 13-11-2-50.5.

(c) "Exceptional use water" has the meaning set forth in IC 13-11-2-72.5.

(d) "Outstanding national resource water" has the meaning set forth in IC 13-11-2-149.5.

(e) "Outstanding state resource water" has the meaning set forth in IC 13-11-2-149.6.

(f) "Watershed" has the meaning set forth in IC 14-8-2-310.

(g) The board may designate a water body as an outstanding state resource water by rule if the board determines that the water body has a unique or special ecological, recreational, or aesthetic significance.

(h) Before the board may adopt a rule designating a water body as an outstanding state resource water, the board must consider the following:

(1) Economic impact analyses, presented by any interested party, taking into account future population and economic development growth.

(2) The biological criteria scores for the water body, using factors that consider fish communities, macro invertebrate communities, and chemical quality criteria using representative biological data from the water body under consideration.

(3) The level of current urban and agricultural development in the watershed.

(4) Whether the designation of the water body as an outstanding state resource water will have a significant adverse effect on future population, development, and economic growth in the watershed, if the water body is in a watershed that has more than three percent (3%) of its land in urban land uses or serves a municipality with a population greater than five thousand (5,000).

(5) Whether the designation of the water body as an outstanding state resource water is necessary to protect the unique or special ecological, recreational, or aesthetic significance of the water body.

(i) Before the board may adopt a rule designating a water body as an outstanding state resource water, the board must make available to the public a written summary of the information considered by the board under subsections (g) and (h), including the board's conclusions concerning that information.

(j) The commissioner shall present a summary of the comments received from the comment period and information that supports a water body designation as an outstanding state resource water to the environmental quality service council not later than one hundred

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1 twenty (120) days after the rule regarding the designation is finally  
2 adopted by the board.

3 (k) Notwithstanding any other provision of this section, the  
4 designation of an outstanding state resource water in effect on January  
5 1, 2000, remains in effect.

6 (l) For a water body designated as an outstanding state resource  
7 water, the board shall provide by rule procedures that will:

8 (1) prevent degradation; and

9 (2) allow for increases and additions in pollutant loadings from an  
10 existing or new discharge if:

11 (A) there will be an overall improvement in water quality for  
12 the outstanding state resource water as described in this  
13 section; and

14 (B) the applicable requirements of 327 IAC 2-1-2(1) and 327  
15 IAC 2-1-2(2) and 327 IAC 2-1.5-4(a) and 327 2-1.5-4(b) are  
16 met.

17 (m) The procedures provided by rule under subsection (l) must  
18 include the following:

19 (1) A definition of significant lowering of water quality that  
20 includes a de minimis quantity of additional pollutant load:

21 (A) for which a new or increased permit limit is required; and

22 (B) below which antidegradation implementation procedures  
23 do not apply.

24 (2) Provisions allowing the permittee to choose application of one  
25 (1) of the following for each activity undertaken by the permittee  
26 that will result in a significant lowering of water quality in the  
27 outstanding state resource water or exceptional use water:

28 (A) Implementation of a water quality project in the watershed  
29 of the outstanding state resource water or the exceptional use  
30 water that will result in an overall improvement of the water  
31 quality of the outstanding state resource water or the  
32 exceptional use water.

33 (B) Payment of a fee, not to exceed five hundred thousand  
34 dollars (\$500,000) based on the type and quantity of increased  
35 pollutant loadings, to the department for deposit in the  
36 outstanding state resource water improvement fund established  
37 under section 14 of this chapter.

38 (3) Criteria for the submission and timely approval of projects  
39 described in subdivision (2)(A).

40 (4) A process for public input in the approval process.

41 (5) Use of water quality data that is less than seven (7) years old  
42 and specific to the outstanding state resource water.

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(6) Criteria for using the watershed improvement fees to fund projects in the watershed that result in improvement in water quality in the outstanding state resource water or exceptional use water.

(n) For a water body designated as an outstanding state resource water after June 30, 2000, the board shall provide by rule antidegradation implementation procedures before the water body is designated in accordance with this section.

(o) A water body may be designated as an outstanding national resource water only by the general assembly after recommendations for designation are made by the board and the environmental quality service council.

(p) Before recommending the designation of an outstanding national resource water, the department shall provide for an adequate public notice and comment period regarding the designation. The commissioner shall present a summary of the comments and information received during the comment period and the department's recommendation concerning designation to the environmental quality service council not later than ninety (90) days after the end of the comment period. The council shall consider the comments, information, and recommendation received from the department, and shall convey its recommendation concerning designation to the general assembly within six (6) months after receipt.

**(q) An exceptional use water for which the board does not complete rulemaking before 2011 for designation as an outstanding state resource water becomes a high quality water (as defined in 327 IAC 2-1.5-2 (47), as in effect on January 1, 2009) by operation of law on January 1, 2011.**

**(r) This subsection applies to all surface waters of the state other than outstanding national resource waters. Because the activities authorized and regulated under an NPDES general permit under 327 IAC 15-5 through 327 IAC 15-15, all as in effect on January 1, 2009, do not result in a significant lowering of water quality, the board may not adopt a rule to apply antidegradation standards and implementation procedures to those activities.**

**(s) The following apply to a rule adopted by the board to apply antidegradation standards and implementation procedures:**

**(1) The rule may regulate a pollutant or pollutant parameter only if the pollutant or pollutant parameter is subject to one (1) or both of the following:**

**(A) A numeric water quality criterion established in a rule or in a statute.**

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(B) Federally promulgated effluent guidelines.

(2) If:

(A) a rule adopted by the board to apply antidegradation standards and implementation procedures requires a permit for a discharge; and

(B) in the review of the permit application the rule requires the commissioner to consider whether the proposed discharge is socially and economically necessary;

the rule must require the commissioner to give substantial weight to any applicable determinations by governmental entities.

SECTION 4. IC 13-18-3-2.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.1 (a) This section applies if:

(1) a discharge results from an activity for which an NPDES permit subject to IC 13-15-4-1(a)(2)(B), IC 13-15-4-1(a)(3)(B), or IC 13-15-4-1(a)(4) is sought;

(2) a permit is required for the discharge under rules adopted by the board to apply antidegradation standards and implementation procedures; and

(3) the period during which the commissioner must approve or deny an application for the permit is established in the rules or in a statute.

(b) The deadline for the commissioner to approve or deny both the NPDES permit referred to in subsection (a)(1) and the permit referred to in subsection (a)(2) is the later of:

(1) the date of expiration of the period for action established in the applicable section referred to in subsection (a)(1); or

(2) the date of expiration of the period for action referred to in subsection (a)(3).

SECTION 5. An emergency is declared for this act.

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